

Massachusetts State Statute

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE II. EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE GOVERNMENT

CHAPTER 22E. STATE DNA DATABASE

Chapter 22E: Section 1 Definitions

Section 1. As used in this chapter, the following words shall have the following meanings, unless the context clearly requires otherwise:--

""CODIS" or ""combined DNA index system", the Federal Bureau of Investigation's national DNA identification index system which facilitates the storage and exchange of DNA records submitted by state and local criminal justice and law enforcement agencies.

""Colonel", the colonel of state police.

""DNA", deoxyribonucleic acid.

""DNA analysis", DNA typing tests that generate numerical identification information and are obtained from a DNA sample.

""DNA record", DNA information that is derived from a DNA sample and DNA analysis and is stored in the state DNA database or in CODIS, including all records pertaining to DNA analysis.

""DNA sample", biological evidence of any nature that is utilized to conduct DNA analysis.

""Department", the department of state police.

""Director", the director of the crime laboratory within the department of state police.

""FBI", the Federal Bureau of Investigation within the United States department of justice.

""State DNA database", the DNA identification records system maintained and administered by the director.

Chapter 22E: Section 2 State DNA database; director

Section 2. There is hereby established within the department of state police a state DNA database under the direction of the director. The director shall be a person knowledgeable in the field of forensic sciences and shall be paid an annual salary which shall be set by the colonel in consultation with the secretary of public safety and the secretary for administration and finance. Such salary shall be competitive with comparable or similar positions in other jurisdictions. The

director shall have responsibility for DNA analysis and the management and administration of the state DNA database.

Chapter 22E: Section 3 Submission of DNA sample

[Text of section effective until July 1, 2004. For text effective July 1, 2004, see below.]

Section 3. Any person who is convicted of an offense that is punishable by imprisonment in the state prison and any person adjudicated a youthful offender by reason of an offense that would be punishable by imprisonment in the state prison if committed by an adult shall, within 1 year of such conviction or adjudication, submit a DNA sample to the department, which shall be collected by a person authorized under section 4, in accordance with regulations or procedures established by the director. The results of such sample shall become part of the state DNA database. The submission of such DNA sample shall not be stayed pending a sentence appeal, motion for new trial, appeal to an appellate court or other post conviction motion or petition.

[Text of section as amended by 2004, 149, Sec. 46 effective July 1, 2004. See 2004, 149, Sec. 428. For text effective until July 1, 2004, see above.]

Section 3. Any person who is convicted of an offense that is punishable by imprisonment in the state prison and any person adjudicated a youthful offender by reason of an offense that would be punishable by imprisonment in the state prison if committed by an adult shall submit a DNA sample to the department within 1 year of such conviction or adjudication or, if incarcerated, before release from custody, whichever occurs first. The sample shall be collected by a person authorized under section 4, in accordance with regulations or procedures established by the director. The results of such sample shall become part of the state DNA database. The submission of such DNA sample shall not be stayed pending a sentence appeal, motion for new trial, appeal to an appellate court or other post conviction motion or petition.

Chapter 22E: Section 4 Collection of DNA samples; civil liability; costs

Section 4. (a) The director may establish regulations or procedures for the collection of DNA samples, including standards for training and licensing personnel who may collect such samples. Only a physician, registered professional nurse, licensed practical nurse, phlebotomist, health care worker with phlebotomist training or a person licensed and trained by the director shall collect DNA samples pursuant to section 3. No person authorized under this section to collect DNA samples, including blood samples, shall be subject to civil liability for the act of withdrawing blood, or any other act directly related to the taking of a DNA sample; provided, however, that they shall employ recognized medical procedures and comply with all regulations or procedures promulgated by the director for the collection of DNA samples. Duly authorized law enforcement and correction personnel may employ reasonable force to assist in collecting DNA samples in cases where an individual refuses to submit to such collection as required under this chapter; provided, further, that such law enforcement and correction personnel shall not be subject to criminal prosecution or civil liability for the use of such reasonable force.

(b) The cost of preparing, collecting and processing a DNA sample shall be assessed against the person required to submit a DNA sample, unless such person is indigent as defined in section 27A of chapter 261. The cost of preparing, collecting and processing a DNA sample shall be determined by the secretary for administration and finance in consultation with the director and

shall be paid to the department and retained by it to offset costs associated with creating, maintaining and administering the state DNA database.

Chapter 22E: Section 5 Collection materials

Section 5. The department shall provide all blood sample vials, collection tubes, mailing tubes, other DNA sample collection materials, labels and instructions for the collection of DNA samples pursuant to this chapter.

Chapter 22E: Section 6 Filing and storage of DNA records

Section 6. All DNA samples collected pursuant to sections 3 and 4 shall be forwarded to the director for the purpose of DNA analysis. The director shall provide for the receipt and analysis of DNA samples and for the filing and storage of DNA records derived from such DNA analysis in the state DNA database. The director shall promulgate regulations governing the collection, submission, receipt, identification, storage and disposal of DNA samples.

Chapter 22E: Section 7 Laboratories and facilities

Section 7. The department is hereby authorized to establish such laboratories and facilities within the commonwealth as may be necessary to conduct forensic and DNA analysis. Notwithstanding the provisions of any general or special law to the contrary, the department is hereby authorized to enter into such contracts, agreements or partnerships with governmental or nongovernmental entities, including educational, scientific, medical or not for profit entities, as the director may deem necessary to meet the purposes of this chapter.

Chapter 22E: Section 8 Rules governing testing and analysis; quality assurance program; independent forensic laboratories

Section 8. The director shall establish procedural rules governing the testing and analysis of DNA samples and a quality assurance program, which shall include proficiency standards for laboratories and analysts responsible for performing DNA testing and analysis. Such procedural rules and quality assurance program shall be compatible with the procedural rules and quality assurance program utilized by the FBI and shall establish compatible laboratory techniques, laboratory equipment, supplies, computer software and acceptance criteria for DNA records in CODIS. The director may employ independent forensic laboratories to perform the DNA analysis required under section 3; provided, however, that such laboratories shall comply with the regulations established pursuant to this section and the procedural rules and quality assurance program established pursuant to this section. With respect to any independent forensic laboratory that performs or seeks to perform the DNA analysis required under section 3, the director may audit such laboratory for compliance with such regulations or procedures as may be adopted under this chapter and may revoke such laboratory's right to create and exchange DNA records on the ground that such laboratory has failed to comply with any regulations, procedures, rules or quality assurance programs established pursuant to this section.

Chapter 22E: Section 9 Confidentiality of records

Section 9. All DNA records collected pursuant to this chapter shall be confidential and shall not be disclosed to any person or agency unless such disclosure shall be authorized by this chapter.

DNA records shall not be stored in a criminal offender record information system operated by the criminal history systems board pursuant to sections 167 to 178, inclusive, of chapter 6.

Chapter 22E: Section 10 Furnishing of records by director

Section 10. (a) The director shall furnish records in his possession, including DNA records and analysis, to police departments in cities and towns, to the department, to the department of correction, to a sheriff's department, to the parole board or to prosecuting officers within the commonwealth upon request in writing or electronically.

(b) The director shall make DNA records available upon written or electronic request to: (1) local, state and federal criminal justice and law enforcement and prosecuting agencies, including forensic laboratories serving such agencies, for identification purposes in order to further official criminal investigations or prosecutions; provided, however, that any DNA sample obtained directly from a person not otherwise required to provide a DNA sample under this chapter and delivered to the director for comparison with DNA records in the state DNA database shall have been obtained pursuant to a warrant; (2) the FBI for storage and maintenance in CODIS; and (3) any person who has been identified and charged with a criminal offense as a result of a search of DNA records stored in the state DNA database; provided, however, that such access shall be limited to DNA information pertaining to such individual.

(c) The director shall make DNA records available upon written or electronic request to meet such purposes or comply with such statutory obligations as may be required under federal law as a condition to obtaining federal grants or funding.

(d) The director may, in his discretion, make DNA records available to authorized persons or organizations, upon written or electronic request, for the limited purpose of (1) advancing DNA analysis methods and supporting statistical interpretation of DNA analysis, including development of population databases; provided, however, that personal identifying information shall be removed from DNA records disclosed for such purposes; (2) assisting in the identification of human remains from mass disasters; (3) assisting the identification and recovery of missing persons; and (4) advancing other humanitarian purposes

Chapter 22E: Section 11 Refusal to provide DNA sample; penalty

Section 11. Any person required to provide a DNA sample pursuant to this chapter and who refuses to provide such DNA sample shall be subject to punishment by a fine of not more than \$1,000 or imprisonment in a jail or house of correction for not more than six months or both.

Chapter 22E: Section 12 Unauthorized disclosure of records; penalty

Section 12. Any person who, by virtue of employment or official position, has possession of, or access to, a DNA sample or record or portion thereof contained in the state DNA database and who purposely discloses such record or portion thereof in any manner to any person or agency not authorized to receive such record or portion thereof shall be subject to punishment by a fine of not more than \$1,000 or imprisonment in a jail or house of correction for not more than six months or both.

Chapter 22E: Section 13 Obtaining records without proper authorization; penalty

Section 13. Any person who, without proper authorization, willfully obtains a DNA record or a portion thereof contained in the state DNA database shall be subject to punishment by a fine of not more than \$1,000 or imprisonment in a jail or house of correction for not more than six months or both.

Chapter 22E: Section 14 Tampering with DNA sample or DNA record; penalty

Section 14. Any person who tampers with or attempts to tamper with a DNA sample or DNA record with the intent to interfere with DNA analysis shall be subject to punishment by a fine of not more than \$5,000 or imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than two and a half years or both such fine and imprisonment.

Chapter 22E: Section 15 Expungement of record

Section 15. Any person whose DNA record has been included in the state DNA database may apply to the superior court to have such record expunged on the grounds that the conviction or judicial determination that resulted in the inclusion of the person's DNA record in the state DNA database has been reversed and the case dismissed; provided, however, that one year shall have elapsed from the date the judgment reversing or dismissing the conviction became final or such person shall have obtained, in writing, authorization from the district attorney that no further prosecution is contemplated under the original offense for which such person was convicted or for which the original judicial determination was entered.